Supreme Court, U. S.
FILED
AUG 28 1980
MICHAEL RODAK, JR., CLERK

No. 80-137

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

DEPARTMENT OF HIGHWAYS,
STATE OF LOUISIANA,
Appellant-Petitioner,

versus

BEAIRD-POULAN, INC.,
Appellee-Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
For the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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MAY IT PLEASE THE COURT:

I

STATEMENT OF THE CASE

A. The Parties.

This suit was instituted by Beaird-Poulan, Inc., and is now prosecuted by its successor in interest, Beaird-

Poulan Division of Emerson Electric Company (hereinafter called "Beaird-Poulan"). Named as defendants were the Department of Highways, State of Louisiana, and the Secretary of Transportation (hereinafter called "Secretary"). The Department of Highways was succeeded by the Department of Transportation and Development, State of Louisiana (hereinafter called "DOH").

B. Nature and History of the Action.

This is an action by Beaird-Poulan against DOH and the Secretary. This suit is brought under the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, PL91-646, 84 Stat. 1894, 42 U.S.C. §§4601 et seq.[1] The suit was filed in March, 1972.

The District Court at first dismissed the complaint on the ground that DOH was prohibited by the laws of Louisiana from complying with the Relocation Act and, therefore, was excepted from compliance with the Act until July 1, 1972, a date after Beaird-Poulan's move. The Fifth Circuit Court (497 F.2d 54) reversed and remanded, holding that the Relocation Act was applicable to DOH at the time of Beaird-Poulan's move.[2] On July 19, 1976, over Beaird-Poulan's objection, the Dis-

1 This is not a diversity action as DOH contends in its petition filed herein.

2 DOH applied to the Supreme Court for certiorari, which was denied.

trict Court ordered that Beaird-Poulan submit its claim for moving or relocation expenses to DOH for administrative determination.[3] The District Court, however, specifically retained jurisdiction to review the "administrative determination."

After the July 19, 1976, order, Beaird-Poulan promptly filed a detailed claim with Mr. Glenn L. Adcock, District Relocation Assistance Officer of DOH (R. 647). On the same day the claim was received, Mr. Adcock denied the claim and forwarded it to Baton Rouge for "final determination" (R. 645). The first administrative step was, therefore, taken in a matter of hours, if not minutes. The second and third steps took longer but with the same result. On October 20, 1976, Mr. Falcon A. Morgan made findings of fact, a conclusion of law, and recommended that "the disapproval [of Mr. Adcock] be affirmed" (R. 639). On January 14, 1977, Mr. Richard A. Currie completed the final administrative step and affirmed the disapproval of Beaird-Poulan's claim (R. 379). Thereafter, the administrative record was filed with the District Court, and Beaird-Poulan and DOH cross-moved for summary judgment. The District Court denied the motions for summary judgment and this action was tried before the District Court without a jury on July 18, 1977.

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3 Beaird-Poulan had attempted years before to file an administrative claim, but neither the State nor the Federal defendants would accept same. Exs. P-13, P-14, P-15, P-16, P-17 (App. 69-76).

After the trial, the District Court rendered judgment in favor of Beaird-Poulan and against DOH, declaring that Beaird-Poulan was a displaced person under the Act, and against Beaird-Poulan and in favor of the Secretary, denying injunctive relief. DOH and Beaird-Poulan entered into a stipulation as to the amount of money Beaird-Poulan would be entitled to receive. The Court of Appeals for the Fifth Circuit affirmed the District Court's judgment.

C. The Undisputed Facts.

The pertinent facts in this case are, we believe, undisputed. Beaird-Poulan was and is engaged in the manufacture and assembly of chain saws in Caddo Parish, Louisiana. From 1950 through March-April of 1971, these activities took place at Beaird-Poulan's plant located on Greenwood Road ("the Greenwood Road Plant"). In March-April, 1971, the manufacturing and assembly operations were moved to another plant located on Flournoy-Lucas Road (the "Flournoy-Lucas Road Plant"). It is this move, more precisely the reason for the move, that gives rise to this suit.

In the Spring of 1970 plans for a new limited access highway were publicly announced and came to the attention of Beaird-Poulan (App. 119, 98-99). I-220 was and is a federally assisted project (Stip. ¶ 5(f), App. 39). The Greenwood Road property was a rather narrow (250') and deep (2700') tract of land of 16½ acres, and the right of way of I-220 was proposed to, and subse-

quently did, physically sever the property into two roughly equal tracts of approximately 6½ acres each. All of Beaird-Poulan's plant facilities are located on the front remaining tract which is separated from the rear remaining tract by what is to be a controlled access highway.

The evidence adduced at trial was uncontested that Beaird-Poulan moved its manufacturing plant as a result of the impending construction of I-220. The District Court so found as a matter of fact.

After making the move,[4] Beaird-Poulan attempted to file a claim with both DOH and the Secretary, but they refused to accept same. This action was then instituted.

II

ARGUMENT

A. Question No. 1: Eleventh Amendment Immunity.

After litigating this case for over eight years, DOH finally raised the Eleventh Amendment for the first

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4 The Regulations in effect when Beaird-Poulan moved make it "clear that a person who moves from real property in response to certain official actions looking to its acquisition may qualify as a 'displaced person' even though he moves before the actual acquisition takes place." 36 Fed. Reg. 9178 (5/29/71). The "initiation of negotiations" is one of those actions. Id. at 9180.

time in the Court of Appeals. DOH's reliance on the Eleventh Amendment is, we submit, misplaced.

The construction project in connection with which Beaird-Poulan moved its manufacturing plant is a federally assisted highway, *i.e.*, Interstate Highway 220. Participation in federally assisted highway construction creates a "partnership" relationship between the state highway agencies and the federal authority and subjects the state agency to federal law. *Named Individual Members v. Texas Highway Department*, 446 F.2d 1013, 1027 (5th Cir. 1971).[5] Indeed, as the Fifth Circuit pointed out the first time this case was before it, the power of DOH to enter into such arrangements with the federal government is specifically granted by La. R.S. 48:212. *Beaird-Poulan v. Department of Highways*, 497 F.2d 54 (5th Cir. 1974). In *Tullock v. State Highway Commission of Missouri*, 507 F.2d 712 (8th Cir. 1974), the Court, citing the *Edelman* case, rejected specifically the 11th Amendment arguments advanced herein by DOH. Id. at 715.[6]

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5 ". . . The North Expressway is now a federal project, and it has been a federal project since the Secretary of Transportation authorized federal participation in the project on August 13, 1970. As such, the North Expressway is subject to the laws of Congress, and the State as a partner in the construction of the project is bound by those laws. . . ." 446 F.2d at 1027.

6 "Appellees raise a number of attacks on the jurisdiction of the Federal Court and the justiciability of this action, all of which we reject. The State Highway Commission urges that it is immune from suit under the eleventh amendment, but this doctrine does not apply to suits seeking injunctive relief against state officials. Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662

It should be noted that the *Tullock* case involved requests for both injunctive relief and for a money judgment against the State Highway Commission of Missouri.

DOH's argument ignores the fact that I-220 is a federally assisted project for the construction of which DOH has contracted with the United States. La. R.S. 48:164 provides as follows:

> "Funds due and payable as a consequence of contracts or other arrangements between the department and the federal government or any federal agency or directly by virtue of any federal law shall, when received, be deposited with the state treasurer to the credit of the General Highway Fund and shall be used only by the department for the purposes of this Chapter, *except as otherwise required by the federal government or federal agency.*" (Emphasis added.)

In view of the specific provision relative to the use of the funds "as required by the federal government," DOH's claim of 11th Amendment immunity is clearly

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(1974); Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908). Moreover, *by accepting the responsibility of administering relocation benefits under the federal statutes, the state has subjected itself to the same obligations as the federal government and thus has consented to be sued. . . .*" 507 F.2d at 715. When DOH provided its assurances to the Secretary of Transportation, it assumed the same responsibility as did the Missouri Highway Commission.

unavailing. Moreover, the existence of La. R.S. 48:164 also prevents DOH from invoking the State of Louisiana's immunity. Under *Edelman v. Jordan,* 415 U.S. 651 (1974), the test as to whether or not a state officer or agency may invoke the Eleventh Amendment immunity turns upon whether or not the funds necessary to satisfy the award will come from the "general revenues of the State," Id. at 665, or "out of the state Treasury." That is not the case here. The underpinning of the Eleventh Amendment, federal judicial intrusion into state fiscal matters is simply not present.

Usry v. Louisiana Department of Highways, 458 F.Supp. 56 (E.D. La. 1978), which is relied upon by DOH, is wholly inapplicable here. In that case the suit was for tort liability arising out of an automobile accident. The funds for payment of a tort judgment against DOH are subject to special appropriation by the Louisiana Legislature, whereas here the funds are received (at least as to 90%) from the federal government and are specifically made subject to the requirements of the federal government by La. R.S. 48:164.

Lastly, the Department of Highways entered into a stipulation dated July 17, 1978, which provides as follows:

> "Now, then, be it accepted by this Court as fact that the amount of eligible expenses and incidental losses incurred by plaintiff and for

> which it would be entitled to payment under 42 *U.S.C.* §4622 as a 'displaced person' is the total sum of $154,099.71, inclusive. In evidence of which determination, liquidation, and concessions, the parties hereto have, by their counsels of record herein, subscribed their respective names on the date shown, for the purpose of allowing this Honorable Court to enter final judgment awarding said amount to plaintiff and payable by the Louisiana Department of Transportation and Development, *all rights of the Louisiana Department of Transportation and Development to appeal any such judgment being reserved solely to the issue and decree that plaintiff is a 'displaced person' under 42 U.S.C. §4601(6).*" (Emphasis Added.) (Appendix C to Petition)

The stipulation followed the judgment of the District Court, which simply declared "Beaird-Poulan a displaced person within the coverage of the" Act. (Appendix E to Petition).

In view of the foregoing, the judgment of the District Court as affirmed is dispositive of all issues except for the question of whether or not Beaird-Poulan is a "displaced person" under 42 U.S.C. §4601(6). This is not a case where the DOH merely pled to the merits and litigated. Here the DOH consented to judgment, reserving only its right to appeal on a single federal issue.

B. Question No. 2: Administrative Review.

DOH's argument concerning judicial review of an agency determination initially overlooks one central point — there was no such judicial review. This suit was filed in *1972* against DOH after DOH refused to accept an administrative claim by Beaird-Poulan for relocation expenses. The District Court dismissed the complaint and, upon Beaird-Poulan's appeal, the Fifth Circuit reversed and remanded. 497 F.2d 54 (5th Cir. 1974), cert. denied, 420 U.S. 990 (1975).

This suit was brought under the Federal Act, not any state law. Indeed, at the time that Beaird-Poulan relocated its manufacturing plant, there was no state relocation act and DOH had already refused to accept a claim. Nevertheless, after remand, the District Court did refer the case to DOH for administrative review. This referral was over the strenuous objection of Beaird-Poulan, and, we submit, contrary to the holding of the Eighth Circuit in *Tullock v. State Highway Commission of Missouri*, 507 F.2d 712 (8th Cir. 1974). In that case the Court of Appeals said:

> "It is further urged by appellees that the District Court was correct in holding that Mrs. Tullock has not exhausted her administrative remedies under 42 U.S.C. §4633(b)(3). The short answer to this is that the State Highway Commission has already concluded

> that she is not eligible to receive any relief under the statute; to require further administrative proceedings would be of no avail. Before Mr. Justice Blackmun, in its answer to Mrs. Tullock's application for a stay, the State Highway Commission specifically stated that: 'The Commission truly believes that its denial of appellant's claim for relocation assistance was proper * * *.' And when the Commission refers to 'its denial,' we take it at its word." 507 F.2d at 715.

DOH had been contending for years in the case at bar that, as a matter of law, Beaird-Poulan was not a "displaced person" and therefore not entitled to relocation benefits under the Act.[7] Therefore, the matters should never have been referred to DOH.

After DOH "administratively" denied Beaird-Poulan's application, both Beaird-Poulan and DOH moved for summary judgment on the "administrative" record. The District Court denied both motions. The case was then tried to the Court and judgment rendered. The judgment rendered in this case was not based upon any administrative record but upon the evidence adduced at the trial. Thus, this case does not involve review of the DOH's administrative determination.

---

7 There has never been any real factual dispute in this case. On the merits, the whole case has and continues to revolve around the proper interpretation of the definition of a "displaced person" contained in the Act.

Moreover, the unique nature of this case justifies the action of the District Court. As stated above, when Beaird-Poulan moved its plant, there was no Louisiana Relocation Act. DOH has consistently argued that the state relocation act, when passed, was not retroactive and availed Beaird-Poulan nothing. Therefore, this case has always involved only the Federal Act. The District Court's ultimate action in this case is fully consistent with proceeding in the absence of a state act. After a trial on the merits, the District Court entered a judgment decreeing that Beaird-Poulan was a displaced person within the meaning of the Act. This was essentially a declaratory judgment. Thereafter, Beaird-Poulan and DOH stipulated judgment for the amount of recovery, should the District Court's decree be upheld on appeal. If there was any error in the District Court's actions, it was referring a suit under a Federal Act to DOH for administrative review. That error was cured, however, when both motions for summary judgment were denied and the case tried on the merits.

Lastly and most importantly, neither Section 102 of the Act nor the cases cited by DOH as prohibiting judicial review are contrary to the action taken by the District Court in these proceedings. Section 102 (42 U.S.C. §4602) provides as follows:

> "(a) The provisions of section 301 of title III of this Act [42 U.S.C. §4651] create no rights or liabilities and shall not affect the

validity of any property acquisitions by purchase or condemnation.

"(b) Nothing in this Act [42 U.S.C. §§4601-4655] shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to . . . [January 2, 1971]."

Subsection (a) deals with real property acquisition policies under Title III of the Act and is wholly inapplicable to this case. Likewise, subsection (b) is inapplicable because it deals only with condemnation proceedings and, of course, this suit is not such an action.

DOH cites *Rhodes v. City of Chicago*, 516 F.2d 1373 (7th Cir. 1975), to support its position. In that case, the Court held that it did not have jurisdiction to enforce the policies concerning acquisition of real property outlined in 42 U.S.C. §§4651 et seq. The case did not deal with the Relocation Assistance. All of the District Court decisions[8] cited by DOH likewise dealt with the acquisition policies portion of the Act (Title III) and not with the Relocation Assistance portion. In fact, the

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8 *Rubin v. Department of Housing and Urban Development*, 347 F.Supp. 555 (E.D. Pa. 1972); *Will-Tex Plastics Manufacturing, Inc. v. Department of Housing and Urban Development*, 346 F.Supp. 645 (E.D. Pa. 1972); *Barnhart v. Brinegar*, 362 F.Supp. 464 (W.D. Mo. 1973); *Nall Motors, Inc. v. Iowa City, Iowa*, 410 F.Supp. 111 (S.D. Iowa 1975).

cases cited by DOH recognize the distinction between Title II of the Act, under which this suit is brought, and Title III of the Act, which affords no judicial remedy.

Contrary to DOH's contention, the cases uniformly recognize the judicial enforceability of the relocation assistance provisions of the Act. *Tullock v. Highway Commission of Missouri*, 507 F.2d 712 (8th Cir. 1974); *Lathan v. Volpe*, 455 F.2d 1111 (9th Cir. 1972) (on rehearing); *La Raza Unida v. Volpe*, 488 F.2d 559 (9th Cir. 1973); *Garrett v. City of Hamtramck*, 394 F.Supp. 1151 (E.D. Mich. 1975). The *Tullock* case is directly on point, and the Court there noted the distinction made in Section 102 of the Act between relocation assistance and real property acquisition policies as follows:

> "Finally, appellee-Department of Transportation argues that the Uniform Relocation Assistance Act precludes judicial review of appellant's claims. We disagree. The decision in Will-Tex Plastics Manufacturing, Inc. v. H.U.D., 346 F.Supp. 654 (E.D. Pa. 1972), on which appellee relies, held only that judicial review of claims under the real property acquisition policies provisions of Title III of the Act was barred. In contrast, Barnhart v. Brinegar, 362 F.Supp. 464 (W.D. Mo. 1973), has considered the question here at issue and concluded, correctly we think, that judicial review of claims relating to relocation assistance is permitted."

C. Question No. 3: "Displaced Person."

DOH seems to attack the factual findings of the District Court (Petition pp. 24-25). However, since there is no showing that those findings are clearly erroneous, it must be accepted as a factual matter that Beaird-Poulan moved its business as a result of the impending acquisition of the I-220 right of way. Therefore, the only issue relative to Question No. 3 is whether or not a partial taking is sufficient to qualify a person as a displaced person. The District Court held that a person who moves as a result of a partial taking of his real property is a displaced person under the Act, and the Fifth Circuit affirmed.

Section 202(a) of the Act (42 U.S.C. §4622(a)) reads, in pertinent part, as follows:

> "Whenever the acquisition of real property . . . will result in the displacement of any person on or after the effective date of this Act, the head of such agency *shall* make a payment to any *displaced person* . . . for —
>
> "(1) actual reasonable expenses in moving himself, his family, *business*, farm operation, or other personal property; . . . ."

Section 101(6) (42 U.S.C. §4601(6)) defines "displaced persons" as follows:

> "(6) The term 'displaced person' means any person who, on or after the effective date of this Act, moves from real property, or moves his personal property from real property, *as a result of the acquisition of such real property, in whole or in part,* or as a result of the written order of the acquiring agency to vacate real property for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of Section 202(a) and (b) and 205 of this title, as a result of the written order of the acquiring agency to vacate other real property on which such person conducts a business or farm operation, for such program or project." (Emphasis added.)

Subparagraph 6 of Section 101 defines two categories of displaced persons. The first is composed of persons who "moves his personal property from real property as a result of acquisition of such real property, in whole or in part . . . ." The second category of displaced persons is composed of those persons who "moves his personal property from real property . . . as a result of the acquisition of . . . other real property on which such persons conducts a business or farm operation . . . ."

We submit that Beaird-Poulan qualifies under the first category of displaced persons. Beaird-Poulan

moved its personal property from real property as the result of the acquisition of such real property, *in part*, by DOH.

DOH apparently interprets the Act to require that the part of the real property upon which the personal property is located be taken in order for the owner to qualify as a displaced person. The District Court during the testimony of Mr. King, the defendant's only witness, pointed out the fallacy of this position:

> "Q Would you read the first category of the definition of displaced person?
>
> "A 'The term "displaced person" means any any person who, on or after the effective date of this act (January 2, 1971), moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as a result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a federal agency, or with federal financial assistance.'
>
> "Q Is says 'in whole or in part', does it not?
>
> "A Yes, sir.
>
> "THE COURT: *I assume the proximity is very important, is it not?*
>
> "THE WITNESS: *Yes, sir.*

"THE COURT: For example, if you have a federal highway assistance project which ran through the back forty of the King Ranch in Texas, that would be rather remote, would it not?

"THE WITNESS: *Yes, sir, that would be a partial acquisition:*

"BY MR. WYATT:

"Q The critical question, Mr. King, is whether or not the move resulted from a partial acquisition?

"A No, sir.

"Q In your opinion, a partial acquisition not touching the buildings in which the personal property is located can never come under the first category of displaced persons?

"A Yes, sir, that is correct.

"Q Is there anything in the regulations published by the Secretary of Transportation which specifically covers that?

"A The Secretary of Transportation's regulations are identical to the Federal Highway Administration regulations in that they cover the two different classes of displaced person.

"Q *They just repeat the statute?*

"A *Right.*"

(App. 149) (Emphasis added.)

We submit that Mr. King's testimony leads inevitably to the conclusion that Beaird-Poulan qualifies under the Act. Two things must concur under the Act for a person to fall into the first category of displaced persons in the case of a partial taking. First, there must be a taking of part of that person's real property. Second, the move must be a result of the partial taking. Under the District Court's example put to Mr. King, there would, of course, be a partial taking of the King Ranch. However, a relocation could not be said to be a result of that partial taking. The example, therefore, clearly shows that the plain language of the statute is workable and just and, therefore, there need be no resort to attempt to limit its plain terms by interpretation. (See *infra* for discussion of interpretation of remedial statutes.) If a person can prove the causal connection between his move and the partial taking of his real property, he qualifies as a displaced person.

As to the second category, we submit that it was obviously designed to cover the taking of one tract which caused the displacee to move from another separate tract. Therefore, when combined, the first category covers a complete and partial taking of a single tract, such as in the case at bar, while the second category covers the taking of one of two separate tracts.

The only other judicial decision we have found which in any way relates to the instant question is *James v. Central and Southern Flood Control Dist.*, 281 So.2d 402 (Fla.

App., 1973). In that case, the governmental body did not acquire any real property rights from the owner. Its actions on other real property acquired from others rendered navigation by the owner's houseboat more difficult. The Court held that the owner was not a displaced person. The *James* case, therefore, stands for the proposition that some real estate which is occupied by the displacee must be acquired for him to qualify as a displaced person. That condition is, of course, met in the case at bar.

We are informed that DOH has polled its counterparts in other states with regard to administrative precedent. DOH attached to its "administrative decision" an unpublished order of the South Carolina State Highway Commission (Petition Appendix T), presumably the only state administrative precedent, a precedent which, we submit, supports Beaird-Poulan's position. In the South Carolina case, the Highway Department took part of the applicant's junk yard. The applicant sought expenses for moving junk in the yard but outside of the boundaries of the acquired right of way. The South Caroline decision directly acknowledged that the acquisition of part of the real property can trigger the obligation to pay moving expenses for moving personal property from the part of the tract not acquired. The order reads in part:

> "4. Further, a 'displaced person' is a person who moves from or moves personal property

> from real property on which such person conducts a business or farm operation, as a result of the acquisition of, or as the result of the written order of the acquiring agency to vacate other real property acquired for a State program or project. 42 *U.S.C.A.* §4601(6). This language has been interpreted by the Federal Highway Administration to mean that relocation *assistance is available to a person under the terms of this provision for relocation of personal property outside of the newly acquired right of way only when the acquisition 'causes a person to vacate . . . his personal property from the real property not acquired . . . .'* Federal Highway Administration PPM 81-1.2 para. 3. A. (2) (September 17, 1973)." (Emphasis added).

The South Carolina case goes on to establish a standard for determining the causal connection between the acquisition of part of a property and the move from the part outside the right of way. Although we seriously doubt that the restrictive standard is justified, Beaird-Poulan meets it in this case. The South Carolina order states:

> ". . . Under these circumstances, I think that the proper test is whether the acquisition by condemning authority of real property *so affects the business interests on other real property that a reasonable owner of a business in like circumstances to that under consideration, in the ordinary exercise of busi-*

ness judgment, would find the continued operation of his business to be so affected by the acquisition of such other real property that he would move personal property of the business outside of the right of way, without regard to the availability of relocation assistance payments." (Emphasis added.)

The business decision of Beaird-Poulan to move was, tentatively at least, made before the Act was even passed by Congress.[9] Therefore, it is clear that the decision by Beaird-Poulan to move was not in any way influenced by the availability of relocation assistance payments.

It should be noted that the South Carolina decision supports the proposition that Beaird-Poulan qualifies under the second category of displaced persons, as well as the first.

Lastly, the purpose of the Act is stated in Section 201 (42 U.S.C. §4621) as follows:

> "The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs

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9 It is the date of the actual move which is essential to qualify a person for benefits under the Act. Relocation Act Section 101(6).

designed for the benefit of the public as a whole."

The Relocation Act is, therefore, a remedial statute. Remedial statutes are liberally construed. E.g., *Peyton v. Rowe*, 391 U.S. 54, 88 S.Ct. 1549, 20 L.Ed.2d 426 (1968); *Blau v. Rayette-Faberage, Inc.*, 389 F.2d 469 (2d Cir. 1968); *Wirtz v. Ti Pi Peat Humus Co.*, 373 F.2d 209 (4th Cir. 1967); *Starkes v. Orleans Motors, Inc.*, 372 F.Supp. 928 (E.D. La. 1974), aff'd., 500 F.2d 1182. "In construing a remedial statute, it is felt that limitations which would take away a right from someone for whom a statute was passed must be express and not subject to varying interpretations." *Pullen v. Otis Elevator Co.*, 292 F.Supp. 715 (W.D. Ga. 1968).

It is submitted that the plain language of the statute covers the case at bar. At worst, there is another, strained interpretation which is advanced by the defendants. To support such an interpretation, one must deny to the words of the statute their plain meaning and engage in an exercise of convoluted semantics. Under the rule of liberal construction of remedial statutes, the interpretation adopted by the District Court and the Court of Appeals should be accepted by this Court.

III

CONCLUSION

The decision of the Fifth Circuit is, we submit, correct, and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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IV

CERTIFICATE OF SERVICE

The undersigned certifies that on this date he has served three copies of the foregoing brief on William W. Irwin, attorney of record for Department of Highways, State of Louisiana, by placing same in the United States Mail, postage prepaid, to his office at Post Office Box 44245, Capitol Station, Baton Rouge, Louisiana 70804, on this, the ____ day of August, 1980.

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